Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM JULY 1, 1968

THROUGH SEPTEMBER 30, 1968

VOLUME 132

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period

From July 1, 1968

Through September 30, 1968

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from July 1, 1968 through September 30, 1968, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated muncipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION
Attorney General

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Executive Assistant

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Deputy Attorney General

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OPINIONS

July 8, 1968

Honorable Richard Beard, Commissioner
Department of Agriculture and Industries
State Office Building
Montgomery, Alabama 36104

Taxation — Exemptions — Sales Tax.

Section 786(34), Subsection (d), Title 51, Code of Alabama 1940, Recompiled 1958, pertaining to "livestock" does not include fish, and the feed purchased in raising fish is subject to sales tax.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your letter dated June 6, 1968, requesting opinion of this office is as follows:

> "Please give me your opinion as to whether feed purchased to be fed to fish is subject to the payment of the state sales tax.
> "Within the past few years, the production of catfish in farm ponds by farmers in Alabama has increased considerably. A very large number of our farmers now produce and sell catfish which are then processed and sold for food purposes.
>
> "As you know, the sale of commercial feed is usually exempt from the payment of the sales tax and I have been asked on several occasions whether the sales tax is required to be paid on feed purchased by farmers who produce and sell fish produced in their farm ponds."

In addition to your letter I have correspondence from Mr. R. L. Godwin of Brundidge Milling Company and from Mr. R. E. Winstead, President of Alabama Feed Mills; also, there is in the file some exemptions taken from a booklet published by the Tax Commission of the State of Mississippi with respect to agricultural products, livestock, poultry, etc. I have given all of these things careful consideration in arriving at the conclusion that I have reached concerning the question as to the exemption of "feed" sold for the production of catfish by certain persons in this state.

I have had the occasion through the years to research and write on the question of just what constitutes "livestock" as that term is used in the exemption section which is Title 51, Section 786(34), Subsection (d), Code of Alabama 1940, Recompiled 1958. I have never found a decision of the Courts holding that the term "livestock" included "fish."

Section (34), Subsection (d), supra, reads as follows:

> "The gross proceeds of sales of insecticides and fungicides and feed for livestock and poultry (but not including prepared food for dogs or cats)."

There is not the slightest indication that the term "livestock" is given or has acquired a technical meaning as it appears in the statute set out above. Consequently, I have concluded that that term is not used in the statute in its **generic** sense, but is used in its generally accepted popular meaning.

It will be noted from the exemption section in question, that the term "livestock" is not used alone in the statute; it is combined with the term "poultry." It reads, "livestock **and** poultry." The Legislature in enacting this statute was not muzzled and it would have been a simple matter, if feed for fish had been intended, for that body to have included "fish" in the statute. The Alabama Supreme Court in **State v. Calumet & Hecla Consol. Copper Co.,** 259 Ala. 225, 66 So. 2d 726, in speaking of whether a designated article was not within the exemption section there in question, said: "If it were not so, the legislature should have told us." It would seem, that this directive would apply to the exemption section here.

That fish are not considered to be included in the term livestock is borne out by the decisions of the courts. **In re Dunkly et al.** 64 F. Supp. 10, involved a bankruptcy proceeding in which certain creditors of the bankrupts were seeking to dismiss the proceeding on the ground that the petitioners were not farmers within the meaning of the bankruptcy act dealing with farmers. The bankrupts as the evidence showed, were engaged in the production of trout for commercial purposes, operating a fish hatchery. The definition of a farmer under the bankruptcy act included those engaged in dairy farming and the production of "poultry or livestock . . . ." The Court said: "The word relied on by them is 'livestock.'" This case embodies most, if not all, of the principles involved in the rendition of this opinion. For this reason, I deem it advisable to quote portions of the decision which includes these principles:

> "Specifically, the main question involved herein is: Are fish livestock? The Court believes that they are not."
>
> * * * * *
>
> "Webster's Collegiate Dictionary is quoted: 'livestock—domestic animals used or raised on a farm, especially those kept for profit.' The same authority is quoted for definitions of 'animals' and 'fish.'
>
> "Counsel, however, overlooked the word **'domestic'** applied to 'animals' in connection with the lexicographer's definition of 'livestock.' Even if counsel's theory that fish are animals were accepted, they are not domestic. They have long been recognized in law as ferae naturae. Treat v. Parsons, 84 Me. 520, 24 A. 946; Columbia River Fishermen's Protective Union v. City of St. Helens, 160 Or. 654, 87 P.2d 195, 198."
>
> * * * * *
>
> "Adjudications of state courts are to the effect that fish are not recognized as animals or livestock."

"In Meader v. Unemployment Compensation Division, 64 Idaho 716, 136 P.2d 984, 987, the appellant urged that he was exempt from contribution under provisions of an Unemployment Compensation Act on the ground that fish were livestock; that the raising and production of livestock in its broader sense includes the science, art and production of plants and animals useful to man, including fish.

"The Supreme Court of Idaho **decided against that contention.** One of its reasons was that the Legislature 'specifically mentioned the raising of bees and poultry as falling within "excepted employment", *** this would indicate that it did not use the word "livestock" in its **generic** sense, so as to include all domestic animals, otherwise the words "bees" and "poultry" are void, superfluous and redundant.' "

* * * * *

"The Idaho Court arrived at this conclusion, which is applicable here: 'Our attention has not been called to the decision of **any** court holding fish are livestock ***, and applying the rule that words and phrases in a legislative act are assumed to have been used in their popular sense if they have not acquired a technical meaning, we cannot conclude our legislature so intended. **The term "livestock", as commonly used and defined** does not include "trout" or "spawn." ' " (Emphasis added)

Along the same line as that cited above, is the case of **Dunkly et al. v. Erich et al.**, 158 F.2d 1. In this case the question also pertained to whether the parties were "farmers" within the meaning of the bankruptcy act. The parties in this case were engaged in the raising of rainbow and brook trout. The Court ruled:

"This court is without the power to so expand the plain terms of the statute. 'Livestock' is an **ordinary** word and should be given its ordinary meaning, and ordinarily fish are not considered to be livestock. We cannot agree with the contention made by appellants that because livestock are animals, and fish are animals, therefore fish are livestock."

* * * * *

"Here we have an instance where the statute specifically enumerates certain activities the nature of which is a matter of common understanding. It seems obvious that by this precise enumeration Congress clearly intended to exclude activities not enumerated. By so holding we do not narrow or broaden the meaning of the statutory language. We interpret the term 'livestock' in the sense in which it is commonly employed.

"We hold that fish are not livestock.*"** (Emphasis added)

The context of the exemption section herein considered does not indicate other than that the term "livestock" was to be given its ordinary,

and popular meaning. In **M. Lloyd Holloway v. State,** 262 Ala. 437, 79 So. 2d 40, the Alabama Supreme Court stated:

> " . . . There is another generally accepted canon of statutory construction, which is that where there is nothing to indicate to the contrary, words in a statute will be given the meaning which is generally accepted in popular, everyday usage . . ."

Thus, the meaning of a statute must be determined from the language used by the Legislature, rather than by speculation as to their unexpressed intention. **Blake v. State,** 59 So. 623, 178 Ala. 407.

The exemption section, supra, states in substance that the "feed" that was exempted was that sold to feed "livestock and poultry. . . ." In such a situation our Courts hold that where a statute **enumerates certain things on which it is to operate,** the statute is to be construed as **excluding from its effect all those things not expressly mentioned. Champion v. McLean,** 95 So. 2d 82, 266 Ala. 103. The hard truth of the matter is that the Legislature has not exempted feed purchased to be fed to fish. If there is one thing that is certain about the statute with respect to its applicability to the question at hand, it is its **uncertainty.** As to the question to be resolved, to say the least, the statute is dubious. As to any doubt in an exemption statute the Courts say in **State v Bankhead Mining Company,** 188 So. 2d 527:

> "One seeking to assert an exemption from taxation has the burden to **clearly establish such right,** and in all cases of **doubt as to legislative intent,** the presumption is in favor of the taxing power." (Emphasis added)

I am aware of the rapid growth in the production of catfish in farm ponds over the state. Catfish raising for commercial purposes is becoming a well established industry like unto that involving poultry. The conclusion to which I have arrived regarding the question at hand has been arrived at with reluctance. As you know, it is my duty to interpret the law as enacted by the Legislature, as I see it. I think it fair to assume that those interested in the poultry industry brought to the attention of the Legislature the urgency for legislation in its behalf. Similarly, it would appear that relief with respect to the commercial raising of fish in Alabama must come from action of the Legislature.

I regret that I have been unable to give you a favorable reply to your question posed in the first paragraph of your request, and hence, it is answered in the affirmative.

Very truly yours,

MacDONALD GALLION
Attorney General

July 16, 1968

Honorable Harry P. Hall
President
Industrial Development Board of the City of Dothan
Post Office Box 248
Dothan, Alabama 36301

Bonds — Loans — Municipalities — Words and Phrases.

1. A Municipal Industrial Development Board may make a loan from a commercial bank to construct a manufacturing facility.

2. The terms "bonds" and "notes" are used interchangeably.

3. Interest paid on loans made by Municipal Industrial Development Boards is exempt from State and local taxation.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated June 10, 1968, is as follows:

"The Industrial Development Board of the City of Dothan was incorporated under Act No. 648 enacted in 1949 for the purpose of promoting industrial growth and other enterprises. We have under consideration a project which we propose to finance through loans from commercial banks. This project would in all respects meet such requirements as are outlined in Act No. 648 and amendments.

"Assuming the above, we request that you provide us a ruling on the following:

"(a) Can the Industrial Development Board of the City of Dothan, Alabama, borrow from commercial banks such sums as needed to construct and lease a manufacturing facility to a leasee meeting the requirements of Act No. 648 and amendments; and

"(b) Would interest paid to such banks on the loan be tax-exempt?"

The Industrial Development Board of the City of Dothan is controlled by the provisions of Act No. 648, Acts of Alabama 1949, page 991, as amended.

This office held in an opinion reported in Quarterly Report of Attorney General, Volume 108, page 10, that a Municipal Industrial Development Board may make a loan by giving its promissory note

therefor secured by a mortgage covering a project of such Board. We also held in said opinion that the terms "bonds" and "notes" are used interchangeably.

Therefore, based upon the above cited opinion and the authorities therein relied upon, your first question is answered in the affirmative.

Section 11 of Act No. 648, as amended, supra, reads as follows:

> "The corporation and all properties at any time owned by it and the income therefrom, and all bonds issued by it and the income therefrom, shall be exempt from all taxation in the State of Alabama."

Therefore, in answer to your second question, I am of the opinion that the interest paid by the Industrial Development Board of the City of Dothan on the proposed loans to which your request refers will be exempt from all State and local taxation.

I express no opinion as to whether such interest will be exempt from Federal Income taxation since this is a matter controlled by Federal statutes and by regulations of the Internal Revenue Service. I understand that recent legislation enacted by the Congress will affect the present income tax status of loans of the type to which your request refers.

Very truly yours,

MacDONALD GALLION
Attorney General

July 16, 1968

Honorable Philip B. Wood, Jr.
Sheriff of Autauga County
Prattville, Alabama 36067

Elections — Voters.

If an illiterate voter requires assistance in casting his ballot, there is no limitation under the law since the enactment of the Voting Rights Act of 1965 (42 U. S. C. A. 1973), that a person assisting the illiterate voter be confined to a particular precinct, beat, or box in the county. However, the assistance may be rendered only at the place where the voter casts his ballot. Opinion by Assistant Attorney General Hall.

Dear Sheriff Wood:

Your request for an official opinion bearing date of June 21, 1968 is as follows:

> "I am asking for an opinion from your office concerning 'voter assistance.' I am aware that the Federal Courts have ruled that a voting citizen can help one person to cast his or her vote, but I want to know if this means that this assistance can be rendered in any Precinct in the County concerned, or the State; or is this assistance restricted to the 'helping person's' voting Precinct, Beat or Box."

Title 17, Section 359, Code of Alabama 1940 (Recompiled 1958), provides as follows:

> "If a qualified elector is unable to read or is so physically disabled that he cannot make his cross mark on a ballot, and request assistance in preparing his ballot, the inspector shall swear him as to such disability, and thereupon no more nor less than two inspectors shall assist such voter by one of them in the presence of the other inspector, marking his ballot as he directs. Each elector in preparing his ballot shall prepare the same in the room or place where such election is being held, and not elsewhere."

However, on August 6, 1965, the Voting Rights Act of 1965 (42 U.S.C.A., Section 1973) was approved, and according to the findings of the courts in **United States v. Louisiana,** 265 F. Supp. 703, 708, affirmed by the United States Supreme Court, 386 U. S. 270, 18 L. Ed. 2d 39, 87 S. Ct. 1023, and **United States v. Executive Committee,** 254 F. Supp. 543, there is nothing in the Voting Rights Act of 1965, supra, which requires that a person rendering assistance to illiterate voters be confined to a particular voting precinct, beat or box in the county. However, the assistance may be rendered only at the place where the voter casts his ballot.

In **United States v. Executive Committee,** supra, Judge Thomas specifically held that the limitations contained in Title 17, Section 359, Code of Alabama 1940, Recompiled 1958, have been supplanted by the Fifteenth Amendment to the United States Constitution as implemented by the Voting Rights Act of 1965, and that the Supremacy Clause of the United States Constitution requires that the procedure for assistance to voters in the Alabama law give way to enforcement of the Voting Rights Act of 1965.—254 F. Supp. 543, at Page 547. To the same effect are the holdings in **United States v. State of Mississippi,** 256 F. Supp. 344, 348; **United States v. Louisiana,** 265 F. Supp. 703, 714-715, aff'd. 386 U. S. 270, 18 L. Ed. 2d 39, 87 S. Ct. 1023; and **United States v. The County Executive Committee of Clarendon County, South Carolina** (D. C. S. Car. C. A. No. 66 & 59).

Very truly yours,

MacDONALD GALLION
Attorney General

July 23, 1968

Honorable Thomas J. Baber
Judge of Probate
Cleburne County
Heflin, Alabama

Counties — County Emergency Rescue Squad — Appropriations.

County Commissioners Court is authorized to appropriate county funds to local rescue organization which is organized under the provisions of Civil Defense Act, Section 10, Act No. 47, Acts of Alabama 1955, but may not do so where local unit is not organized under said Act.

Opinion by Assistant Attorney General Calhoun.

Dear Sir:

Your request for an official opinion of this office, dated May 29, 1968, is as follows:

> "Is it lawful for the Commissioners Court of Cleburne County, by resolution, to expend small amounts of monies from time to time to promote the works of the Cleburne County Emergency Rescue Squad, Inc.?
>
> "This organization is incorporated and chartered under the laws of the State of Alabama as a non-profit, eleemosynary corporation.
>
> "The object of the organization is to render aid to persons in distress, administer first aid and perform missions incident to the rescue of human beings who are in distress, and to transport such persons to suitable hospitals; to purchase, acquire by gifts, or otherwise, ambulances, boats, trucks, oxygen equipment, first aid supplies, and any and all other property needed in the performance of the missions and to own and hold in fee, or by lease, sufficient and suitable real estate and buildings necessary for headquarters and for storage of equipment and supplies owned or used in the furtherance of said rescue work, required and supported by the people and the general public generally, and for educational purposes.
>
> "The organization is incorporated and chartered under the laws of the State of Alabama as a non-profit, eleemosynary corporation. They do outstanding work and render a great service to our County and State."

You do not state in your letter whether or not the Cleburne County Emergency Rescue Squad is organized under the provisions of the Civil Defense Act, Section 10, Act No. 47, Acts of Alabama 1955, Page 278,

now codified as Title 37A, Section 19(75), Code of Alabama 1940, Recompiled 1958.

In the absence of such information, I am of the opinion that your inquiry must be answered in the alternative.

In the event the Cleburne County Emergency Rescue Squad is not organized under the Civil Defense Act, Section 10, Act No. 47, supra, my answer to your inquiry is in the negative.

The Commissioners Court of Cleburne County is purely a statutory creature of the State Legislature and, as such, has only such authority as has been expressly granted by statute or such power and authority as may be necessarily implied from express powers granted. **Arledge v. Chilton County,** 237 Ala. 96, 185 So. 419; **Corning v. Patton,** 236 Ala. 354, 182 So. 39; **State ex rel. Towle v. Stone,** 236 Ala. 82, 181 So. 281; **Rhodes v Marengo County Bank,** 205 Ala. 667, 88 So. 850.

This office has consistently held that public funds, subject to control of a county governing body, cannot be expended except where authorized by law or necessary implication of law. See the following Quarterly Reports of the Attorney General: Volume 41, page 42; Volume 49, page 93; Volume 76, page 37; Volume 88, page 30; Volume 98, page 9; Volume 102, page 13; Volume 114, page 44.

Your attention is directed, in particular, to Title 12, Section 12, Code of Alabama 1940, as amended, which sets forth the principal powers expressly delegated to courts of county commissioners. An examination of this section discloses no authorization from which it can be implied that a county commissioners court may make the appropriations in question.

Moreover, after research of our statutes, I find no other source of authority in the law for your Commissioners Court to appropriate public funds to the Cleburne County Emergency Squad, provided such rescue unit is not organized under the provisions of the Civil Defense Act, supra.

In the event the Cleburne County Emergency Rescue Squad is organized under Section 10, Act No. 47, supra, your attention is directed to the broad powers granted Cleburne County in sub-section (1), subhead (b), of said Section 10 wherein it is expressly provided that each political subdivision of the State is authorized to appropriate and expend public funds for the purpose of aiding a local organization created under this Act in carrying out a program of civil defense.

You are advised, therefore, that the Commissioners Court of Cleburne County is authorized to appropriate funds to the Cleburne County Emergency Rescue Squad, provided the same is organized under Section 10, Act No. 47, supra. I am enclosing a copy of an informal opinion of this office to Mr. R. Harold Young, Member, Board of Revenue, Cherokee County, under date of September 19, 1963, said

opinion advising that appropriations of a county governing body to a local rescue organization created under Act No. 47, supra, are authorized under the provisions of the Act where made for the purpose hereinabove considered.

Yours very truly,

MacDONALD GALLION
Attorney General

July 29, 1968

Honorable Woodie S. Napper
Superintendent
Choctaw County Schools
Butler, Alabama

Schools — Teachers — County Superintendents of Education — Funds.

1. Teachers who teach solely in the adult education program do not come under Sections 351 and 361(2), Title 52, Code of Alabama 1940, Recompiled 1958.

2. Teachers who teach in the public and elementary schools of this state and also in the adult education program do come under Sections 351 and 361(2), Title 52, Code of Alabama 1940, Recompiled 1958.

3. County and city superintendents of education may not receive pay other than their regular salary for supervising the adult education program provided for by Sections 399 through 402, Title 52, Code of Alabama 1940, Recompiled 1958.

Opinion by Assistant Attorney General Madison.

Dear Sir:

Your request for an official opinion bearing date of July 15, 1968, is as follows:

"The Federal Government has made it possible for adults to have a chance to be involved in basic adult classes. These classes are provided for through application each year.

"I would like to know if this type of employment for personnel already employed as a teacher comes under the school law as provided for in Title 52, Sections 351 and 361(2).

"These classes usually meet between six and eight o'clock for four hours per week.

"I would also like to know if an elected Superintendent could supervise and receive pay for such work. This work would be

done after legal office hours. Is this contrary to Title 52, Section 111?"

By Section 401, Title 52, Code of Alabama 1940, Recompiled 1958, the State Board of Education and county and city boards of education are authorized to cooperate with the federal government in making effective any law enacted, or that may be enacted, by Congress for the removal of illiteracy and for maintaining adult education programs and classes in Alabama and in the counties and cities thereof.

I do not feel that the above programs for adult education in which county and city boards of education may cooperate are a part of the public school system as that system is generally understood to be by the people of this state. **Elsberry v. Seay,** 83 Ala. 614, 3 So. 804

As I understand your request, you refer to a teacher who has been employed to teach in the public and elementary schools of this state but also teaches in the adult program. Such a teacher is of course subject to and comes under the provisions of Title 52, Sections 351 and 361(2), Code of Alabama 1940, Recompiled 1958.

If, however, the teacher is employed solely to teach in the adult education program, she or he would not be under either of the above Sections 351 and 361(2), even if paid by funds appropriated by the city and county boards of education under Section 400 of said Title 52.

A part of your duties as Superintendent for which you are now being paid is to cooperate in the adult program under Section 401, supra. In addition, you must devote your entire time to those duties placed upon you by law. Title 52, Section 111, Code of Alabama 1940, Recompiled 1958.

It is my opinion therefore that your second question must be answered in the negative.

Yours very truly,

MacDONALD GALLION
Attorney General

August 1, 1968

Honorable C. Neal Pope
County Attorney
Russell County
P. O. Box 130
Phenix City, Alabama 36867

Bids — Contracts — Counties — Words and Phrases.

The term "resident responsible bidder" is defined as a person, firm or corporation deemed to be a responsible bidder, having a place of business within the county

where the awarding authority is the county or an instrumentality thereof.

Opinion by Assistant Attorney General Webb.

Dear Mr. Pope:

I have your request for an official opinion under date of July 10, 1968, which is as follows:

> "On behalf of the Board of County Commissioners for Russell County, Alabama, whom I represent, I certify the following question to you and respectfully request that you issue your opinion to me regarding this matter. Specifically my request deals with Section I of Act No. 217, popularly known as the Competitive Bid Law, which said act is dated May 19, 1967.
>
> "We are desirous of knowing whether or not a corporation that is incorporated in the State of Georgia with its principal place of business in Columbus, Muscogee County, Georgia, but which is qualified to do business in the State of Alabama and maintains a plant in Russell County, Alabama, is a 'resident responsible bidder' in terms of Section I of the Alabama Competitive Bid Law, and as such whether they are entitled to the three (3) per cent advantage specified in the said act."

The provision of law referred to by you is the following passage of Section 1, Act No. 217, Acts of Alabama 1967, Page 259:

> " . . .; provided, however, that in the event a bid is received for an item of personal property to be purchased or contracted for from **a person, firm or corporation, deemed to be a responsible bidder, having a place of business within the county, where the awarding authority is the county or an instrumentality thereof,** or within the municipality, where the municipality or an instrumentality thereof is the awarding authority, which such bid is no more than 3% greater than the bid of the lowest responsible bidder, the awarding authority may award the contract to such **resident responsible bidder. . . .**" [Emphasis supplied]

In my opinion, a corporation that is incorporated in the State of Georgia, with its principal place of business in Georgia but which is qualified to do business in the State of Alabama and maintains a plant in Russell County, Alabama, is a resident responsible bidder within the meaning of the above-quoted part of Section 1, supra.

You will note that preceding the term "resident responsible bidder" appears the word "such" which, in my opinion, refers to the passage immediately preceding the term in the nature of a definition. This definition would be a person, firm or corporation, deemed to be a responsible bidder, having a place of business within the county where the awarding authority is the county or instrumentality thereof. I am, therefore, of the opinion that if the corporation has been deemed to be

a responsible bidder it does constitute a resident responsible bidder within the meaning of Section 1, supra.

Yours very truly,
MacDONALD GALLION
Attorney General

August 5, 1968

Honorable W. Loy Campbell
Attorney for the Board of Revenue
Jackson County
Scottsboro, Alabama 35768

Counties — Funds — Schools.

1. Governing bodies of the respective counties of the State may in their discretion erect and maintain parking meters on real estate owned by the county upon which the courthouse is situated.

2. Funds derived from the operation and maintenance of parking meters on county-owned real estate, upon which the courthouse is located, shall be paid into the General Fund of the county, and may be appropriated annually for the support of public schools within the county.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your request for an official opinion bearing date of July 17, 1968, is as follows:

"Jackson County owns a site upon which the courthouse is erected in Scottsboro, Alabama, together with an area surrounding it that is presently used as a public parking area. A request has been made to the Board of Revenue to place parking meters in this parking area for the purpose of limiting parking, and with the production of revenue as an incident thereto. Doubts have been expressed as to whether the Board of Revenue of Jackson County is vested with any such power, since the erection and maintenance of parking meters are primarily an exercise of governmental police powers.

"Would you please furnish your opinion to the Board of Revenue as to whether it can legally erect, maintain and operate parking meters on the public property owned by it.

"In the event your answer to the above question is in the affirmative, would it be possible for the Board of Revenue to designate that the revenue from these parking meters be used solely for educational purposes in the county, or would it be required that

the monies be paid into the general fund of the county and then distributed annually by appropriations?"

Your attention is directed to Title 12, Section 12, Subsection 1, Code of Alabama 1940, Recompiled 1958, which is as follows:

"1. To direct and control the property of the county as it may deem expedient according to law, ... "

The above authority vests in the county governing body very broad discretion and vests in the county the complete control of the courthouse and courthouse grounds. Quarterly Report of Attorney General, Volume 18, Page 159.

Under this authority county governing bodies may install county-owned parking meters on the courthouse grounds, or could, if deemed proper, lease this property to private individuals or corporations to accomplish the aforesaid purpose. See informal opinion of the Attorney General to Mr. Harold R. Laubscher, dated April 24, 1962, and also informal opinion of the Attorney General to Honorable Thomas C. Pettus, Attorney, dated February 28, 1963. The whole property in question is county property and no part of the city streets.

In accordance with the above, funds received by the county governing body, for the operation of such parking facility on the courthouse grounds, should be paid into the General Fund of the County. A county is authorized to appropriate funds to the school board for the support of the public schools within said county. Title 52, Section 207, Code of Alabama 1940, Recompiled 1958.

I trust this answers your inquiry.

Very truly yours,
MacDONALD GALLION
Attorney General

August 7, 1968

Honorable T. J. Lockhart
Sheriff, Chilton County
Clanton, Alabama 35045

Prisoners — Counties — Employment.

County prisoner may not be allowed a furlough on weekends for private employment.

Opinion by Assistant Attorney General Turner.

Dear Mr. Lockhart:

Your request for an official opinion of this office, dated June 24, 1968, is as follows:

"Our County has no funds for tobacco or certain other items of personal use for County Prisoners.

"Private parties have offered to employ them in their yards, harvesting on farms, etc., on weekends for pay when they are not working for the County. Certain of our County prisoners with records of good behavior would welcome this opportunity to pick up extra spending money.

"Under Title 45, Section 75, their county work is under the superintendence of our County governing body. It does not prohibit voluntary private employment. Section 39 allows prisoners to work for themselves when their assigned regular duties are completed.

"If prisoners with good records volunteer for private contract or self-employment, may I turn them out on furlough for this purpose, or otherwise entrust their custody to prospective, deputized employers?"

The only legal punishments provided for in the State of Alabama are set out in Title 15, Section 325, Code of Alabama 1940, as Recompiled 1958, and these are, besides removal from office and disqualification to hold office, fines, hard labor for the county, imprisonment in the county jail, imprisonment in the penitentiary, which includes hard labor for the State, and death by electrocution. A prisoner, then, in the county jail would be under a sentence of hard labor for the county or imprisonment in the county jail.

Title 45, Section 74, et seq., Code of Alabama 1940, as Recompiled 1958, govern and direct the manner in which hard labor convicts may be worked. It is true that Section 75 of this Title, states that the hard labor cases for the county shall be under the superintendence and control of the county governing body and that they shall determine in what manner and on what particular work the hard labor shall be performed.

However, this refers to work for the county with certain areas of work specifically approved, such as work on the public roads when authorized under the rules and regulations prescribed by the Director of the Board of Corrections.

Title 45, Section 39, Code of Alabama 1940, as Recompiled 1958, allowing convicts to work for themselves after they have completed their assigned tasks is not here applicable. It appears that the system which you propose would be tantamount to the granting of a parole and the courts of Alabama have made it clear that the granting, the administration and supervision of paroles are vested exclusively in the Board of Pardons and Paroles. **Pinkerton v. State,** 29 Ala. App. 472, 198 So. 157.

Therefore, it is my opinion that your inquiry must be answered in the negative.

Very truly yours,

MacDONALD GALLION
Attorney General

August 7, 1968

Honorable William H. McDermott
City Attorney
City of Chickasaw
Chickasaw, Alabama

Boards of Registrars — Elections — Municipalities — Registration.

A person otherwise qualified must register to vote not less than ten days prior to the date of the municipal election at which he offers to vote.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 1, 1968, is as follows:

> "I am aware of the opinion from the office of the Attorney General to Judge T. C. Almon dated February 11, 1954, found in Quarterly Report of the Attorney General, Volume 74, page 38 to the effect that municipal elections are not included in the provisions of Act No. 6, General and Local Acts 1951, page 45, which prohibits registration of voters within ten (10) days of certain elections. I have also been told of a statement appearing in an informal opinion from your office issued October 6, 1965, to Mrs. Susie G. Kuffskie, Chief Clerk of the Mobile County Board of Registrars, referring to the official opinion hereinabove cited, apparently with approval.
>
> "This informal opinion to Mrs. Kuffskie was written after enactment of Act No. 663, Regular Session 1961, which, in Section 18 thereof, specifically forbids voting at municipal elections by persons who have registered as electors less than ten (10) days prior to the municipal election.
>
> "I would appreciate it if you would advise me whether persons who register to vote within ten (10) days of a municipal election are eligible to vote thereat, or whether the restriction contained in Section 18 of said Act No. 663, 1961 Acts of Alabama, requires that any such voter shall have registered at least ten (10) days prior to the municipal election."

All municipal elections held in the City of Chickasaw must be conducted under the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582. See Quarterly Report of Attorney General, Volume 126, page 8.

Section 18 of Act No. 663, supra, reads, in part, as follows:

> " . . . No person may vote at any such election unless he is a registered and qualified elector of the State of Alabama, who

has resided in the county one year and in the ward three months prior to the election and who has registered not less than ten days prior to the date of the election at which he offers to vote. . . ."

I am of the opinion that the above-quoted portion of said Section 18, requires that a person otherwise qualified as an elector must have registered not less than ten days prior to the date of the election at which he offers to vote.

The opinion to Miss Susie Kuffskie, Clerk, Board of Registrars, Mobile County, under date of October 6, 1965, (not reported) considered a constitutional amendment election and not a municipal election. It is therefore not applicable here.

The opinion reported in Quarterly Report of Attorney General, Volume 74, page 38, held that registration of persons as qualified electors within ten days prior to any primary, special or general election, is prohibited only in cases where said elections are county-wide or state-wide in scope. Said opinion is not in conflict with the opinion expressed herein.

Very truly yours,

MacDONALD GALLION
Attorney General

August 14, 1968

Honorable Perry O. Hooper
Judge of Probate
Montgomery County Court House
Montgomery, Alabama

Filing Tax — Deed Tax — Leases — Banks — Exemptions.

1. Banks chartered by the banking authorities of the State of Alabama although not exempt from deed tax by the express provisions of Section 618, as amended, Title 51, Code of Alabama, Recompiled 1958, are exempt from such tax under the provisions of Section 888(1), Title 51, Code of Alabama, Recompiled 1958 (1967 Cumulative Pocket Part).

2. A wholly owned subsidiary of a state bank, composed of the same individuals and having the same board of directors, is not exempt from deed privilege tax since it is a separate corporation not chartered by the banking authorities of the State of Alabama and therefore not falling within the purview of such exemption statute.

3. Exemption statutes must always be construed most strongly against the person seeking the exemption.

Opinion by Assistant Attorney General Loeb.

Dear Judge Hooper:

Your request for an official opinion dated July 9, 1968, is as follows:

> "May I respectfully request your opinion on the following questions which arise out of the facts set forth below:
>
> "On June 4, 1968, the firm of Hill, Hill, Stovall & Carter filed in this office a lease agreement between the Union Bank & Trust Company, a Corporation, of Montgomery, Alabama, and Union Bank Building, Inc, a Corporation, of Montgomery, Alabama. The Union Bank Building, Inc. was organized as a convenience only, and for the sole purpose of leasing the land owned by Union Bank & Trust Company upon which the Union Bank building is to be constructed. The question arises as to whether the Union Bank Building, Inc. would owe deed tax as levied in Title 51, Section 618, Code of Alabama 1958, Recompiled. As I have previously stated, the Union Bank Building, Inc. is composed of the same individuals as Union Bank & Trust Company, and the question has arisen, since this is a wholly owned subsidiary, as to whether it could possibly be exempted from the taxation in Title 51, Section 618, supra.
>
> "I am enclosing a copy of this trust agreement for your consideration, and would appreciate an answer at your earliest convenience."

The lease agreement dated March 24, 1967, a copy of which is attached to your request, is between Union Bank & Trust Company, a corporation, and Union Bank Building, Inc. You state in your request that Union Bank Building, Inc., is composed of the same individuals and has the same board of directors as Union Bank & Trust Company; that all of the stock of Union Bank Building, Inc., is owned by Union Bank & Trust Company, a state bank, and that Union Bank Building, Inc., was organized for the convenience of the Union Bank & Trust Company for the sole purpose of taking the lease on land owned by said bank.

The question you pose is whether or not Union Bank Building, Inc., should be accorded an exemption from deed tax levied by Title 51, Section 618, as amended, Code of Alabama, Recompiled 1958, assuming that Union Bank & Trust Company would be entitled to such exemption had the lease been made to it.

State banks have been exempt from payment of mortgage privilege tax since 1947 under the provisions of Section 619(1), as amended, Title 51, Code of Alabama, Recompiled 1958. Such banks have not been exempt from payment of deed privilege tax by the express provisions of Section 618, supra. However, in 1967, the Alabama Legislature, with the intention of equalizing the taxation of state and national banks, passed the follow-

ing provision of law which has been codified as Title 51, Section 888(1), Code of Alabama, Recompiled 1958 (1967 Cumulative Pocket Part):

> "No tax levied by the state of Alabama, whether upon property, franchise, income **or otherwise,** shall be levied upon or applicable to a bank chartered by the banking authorities of the state of Alabama unless said tax is levied upon and applicable to all banks and banking institutions, including national banks, doing business in the state of Alabama." (Emphasis added.)

This provision, in my opinion, would exempt a state bank from payment of deed privilege tax levied under Section 618, supra, but I do not think that the exemption accorded to state banks under Section 888(1), supra, can be extended to cover an entirely separate corporation not chartered by the banking authorities of the State of Alabama and not engaged in banking functions. The facts that Union Bank Building, Inc., is composed of the same individuals as, has the same board of directors as, and is a wholly owned subsidiary of the Union Bank & Trust Company do not mean that such corporation would step into the shoes of the parent insofar as the construction of a tax exemption statute of this nature is concerned. The exemption granted by Section 888(1), supra, is based entirely upon the nature and character of the instrumentality. If such instrumentality is a bank chartered by the banking authorities of the State of Alabama, it is exempt; if it is not, the exemption does not apply. The corporation here involved is not a state bank chartered by the banking authorities of this State and cannot qualify under the exemption statute here involved. This conclusion is even stronger when the rule of construction used to interpret tax exemption statutes is applied. Such statutes should be construed most strongly against the person seeking the exemption. **State v. Wertheimer Bag Company,** 253 Ala. 124, 43 So. 2d 824.

Yours very truly,

MacDONALD GALLION
Attorney General

August 16, 1968

Honorable Ben Reeves
Judge of Probate
Pike County
Troy, Alabama

Filing Tax — Judges of Probate — Secretary of State — Uniform Commercial Code.

1. Where transfer of equity in personalty is made "subject to" existing mortgage on which tax has previously been paid, notice filing under Uniform Commercial Code may be accomplished by filing UCC-3, designated as an amendment; and no additional mortgage tax is due.

2. Where such transfer of equity specifies that the new debtor assumes all liability under original mortgage and original debtor is relieved of any further liability thereunder, such original mortgage should be terminated under provisions of Section 9-404, Uniform Commercial Code, and a new financing statement should be filed on a UCC-1, and mortgage tax paid on amount of indebtedness outstanding at the time of transfer.

3. Where the intent of the parties has not been clearly shown on the face of the instrument or instruments offered for filing, Judge of Probate should return same for additional information.

Opinion by Assistant Attorneys General Hart and Loeb.

Dear Sir:

Your request for an official opinion from this office, bearing date of July 29, 1968, is as follows:

> "Enclosed is a copy of an amendment to FS #783 which was sent to this office for filing. I wrote Associates Discount Corp. stating that I did not think this could be filed on an amendment, but should be an entirely new FS with mortgage tax. I am enclosing a copy of the reply from Associates Discount Corp.
>
> "Please send me opinion as to whether a Financing Statement can be transferred from one **debtor** to another in this manner."

From the facts set out in your request, attachments thereto, and subsequent telephone conversations with reference to said request, it appears that the original purchaser of a mobile home is attempting to transfer his equity in same to a third party with the consent of the creditor. It also appears that such equity is being transferred "subject to" a mortgage on said mobile home. We take this to mean, and for purposes of this opinion are assuming, that the original purchaser is still liable under the mortgage and is not to be released from any liability thereunder; but that the new purchaser has agreed to pay to the creditor all of the remaining balance due under the original mortgage. There is no cash consideration between the parties for this transfer of equity.

The parties have attempted to accomplish this transfer by tendering to you a UCC-3, designated in Box 8 as "amendment", and stating in Box 10 "To transfer a mortgage . . . from Jimmy Lee and Reginia Faulkner to Beryl L. Freeman." Otherwise, said UCC-3 seems to meet all minimum legal requirements of an original financing statement. Your question is: Can this transfer be accomplished by the filing of a UCC-3 designated as an amendment, and is there a mortgage privilege tax due for filing same?

Assuming, then, for the purposes of this opinion, that the original purchaser is not being released from his obligation under the mortgage

and that the new purchaser is merely being added as an additional debtor to whom the creditor may and will look for payment of the mortgage, it is our opinion that this may be accomplished by filing a UCC-3, designated as an amendment, and containing the appropriate information in Box 10. No additional mortgage privilege tax would be due to be paid since the original mortgage, or security interest, still exists and mortgage tax has presumably been paid for the recordation of filing thereof. All that is being done is adding an additional debtor to whom the creditor may, and will, look for payment.

When such UCC-3 is offered to you for filing purposes, it should contain in Box 4 a reference to the original financing statement by number, location, and date. When said UCC-3 is accepted by you for filing in your office, same should be filed under the same number and cover as the original financing statement and referred to therein so that all information pertaining to the security interest perfected on the mobile home in question will be contained in the same jacket and cross-indexed accordingly.

Although the facts in your inquiry seem to indicate a situation such as described above, we feel it necessary to point out to you that there is a second situation which could exist and should be handled differently.

Had the facts indicated that in transferring the equity to the new purchaser such purchaser not only agreed to pay the remaining balance due on the mortgage, but further agreed to be solely responsible for such payment, thereby releasing, by specific agreement, the original purchaser from any further obligation or liability under the original mortgage, an entirely different situation would exist. Since, in this situation, the creditor has agreed to release the first purchaser from any further responsibility under the original mortgage, such mortgage would cease to exist and the new security interest that is to be created between the creditor and the new debtor can only be perfected by filing a new financing statement (UCC-1) and/or security agreement. It would also be necessary that a termination statement be filed under the provisions of Title 7A, Section 9-404, Code of Alabama 1940. In such case, mortgage privilege tax would be due to be collected by you upon that portion of the indebtedness remaining unpaid at the time such transfer of equity is effected. This means, then, that the termination statement would be filed under cover of the original financing statement, thus concluding that file; while a new financing statement, creating the new security interest, would be handled in the normal manner by being given a new number and new alphabetical listing.

It is important to add that rather than your assuming the burden of deciding in which of the above categories the transaction falls, you place such burden upon the parties seeking to file said instruments. In all instances, you should request that such parties make their intentions absolutely clear, by stating on the face of either the UCC-1, UCC-3, or the security agreement itself, exactly what their intent is. This means

that if such intent is not clearly shown on the face of the documents sought to be filed, you should return same for additional information.

I trust that the above information is sufficient to answer the questions presented in your inquiry. If there is any other way in which we can be of further assistance to you, please advise.

Yours very truly,

MacDONALD GALLION
Attorney General

August 21, 1968

Honorable J. Paul Meeks
Judge of Probate
Jefferson County
Courthouse
Birmingham, Alabama 35203

Elections — Municipalities.

The method for changing the form of government of the City of Bessemer and electing the governing body, after such change is voted, discussed generally.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 14, 1968, is as follows:

> "Act No. 429 of the 1949 Regular Session of the Legislature, approved August 23, 1949, provides for the form of government of the City of Bessemer, Alabama as it is now operating. Section XVII, on page 622 of the 1949 Acts, provides in substance 'that the form of government of said city may be changed or altered by the people of said city in the same manner and method and according to the same rules as provided for in the general laws of the State of Alabama; provided that in the event the form of government of said city is changed, then the officials of said city under the new form of government shall be elected in a municipal election to be held by order of the Judge of Probate of Jefferson County, such election to be held not less than thirty (30) days and not more than sixty (60) days from the date upon which the result of such election to change the form of government is declared to the Judge of Probate of said county; - - -.'
>
> "A petition to abolish the present form of government of the City of Bessemer bearing approximately 1400 signatures has been filed in this office pursuant to Article 3, Chapter 4 of Title 37, Code of Alabama.

"In the event this petition is certified to be sufficient and the election to change the form of government is voted by the electorate, does Section XVII of the above mentioned Act govern for the calling of the election of the officials of said city under the new form of government?

"Also will you kindly advise to the extent that Act No. 664 of the 1961 Regular Session of the Legislature controls such election.

"It also appears that Section 133(1) of Title 37, as amended, applies to the time of change of the form of government."

The governing body of the City of Bessemer is now operating under the provisions of Act No. 429, Acts of Alabama 1949, page 616, which is cited in your request. As pointed out in Quarterly Report of Attorney General, Volume 58, page 45, this Act has been in effect since November 21, 1949, and, laying aside any constitutional considerations, must be considered as the statutory law of this State.

That portion of Act No. 429, supra, which is quoted in your request, provides that the form of government of the City of Bessemer may be changed by the people of the City in the same manner and method and according to the same rules as are provided for in the general laws of the State.

The statute which controls the abandonment of the commission form of municipal government in this State is codified as Title 37, Chapter 4, Article 3, Code of Alabama 1940. Some of the provisions of this statute have been modified by later legislation.

All municipal elections held in cities and towns of 300,000 population or less which have a commission form of government are controlled by Act No. 664, Acts of Alabama 1961, page 868, as amended by Act No. 166, Acts of Alabama, Regular Session 1965, page 233. All municipal elections held in cities and towns which do not have a commission form of government are controlled by Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582. See **Bouldin v. City of Homewood,** 277 Ala. 665, 174 So. 2d 306, and Quarterly Report of Attorney General, Volume 126, page 8.

Act No. 71, Acts of Alabama 1959, page 477, provides that no change from the commission to the mayor-council form of government directed by vote of the electors of a municipality shall become effective until October 1 of the general municipal election year next following the election at which such change is voted. Quarterly Reports of Attorney General, Volume 111, page 78 and Volume 115, page 36.

If a change in the form of government of the City of Bessemer from the commission to the mayor-council form is directed by the electors thereof as a result of the petition to which your request refers, such change will take place at the time specified by Act No. 71, supra, and the election to select a mayor and members of the city council should be held under the provisions of Act No. 663, as amended, supra.

Premises considered, I am of the opinion that the statutes discussed hereinabove have the effect of modifying the provisions of Act No. 429, supra, to the extent that it is no longer required that you order an election to select the governing body of the City of Bessemer after it has changed its form of government. Cf. Quarterly Report of Attorney General, Volume 20, page 156.

It should also be pointed out that the problem presented by your request is not controlled by the case of **Connor v. State,** 275 Ala. 230, 153 So. 2d 787. The Supreme Court of Alabama in that case construed the adoption by the City of Birmingham of a form of government prescribed by a general law of local application and held that Act No. 71, supra, did not apply to said City. See also **Reid v. City of Birmingham,** 274 Ala. 629, 150 So. 2d 735. A comparable general law of local application is not applicable to the City of Bessemer.

Very truly yours,

MacDONALD GALLION
Attorney General

August 26, 1968

Mrs. Ruby C. Neeley
Clerk-Treasurer
City of Huntsville
Huntsville, Alabama

Elections — Municipalities — Time.

Central Daylight Saving Time governs the opening and closing of the polls in municipal elections conducted after the last Sunday of April, 1968, and prior to the last Sunday of October, 1968.

Opinion by Assistant Attorney General Gish.

Dear Mrs. Neeley:

Your request for an official opinion dated August 9, 1968, is as follows:

> "The following conflicting provisions appear to apply to the General Municipal Election to be held on September 3, 1968, in the City of Huntsville, Alabama:
>
> "Title 37, Sec. 34(20)(b), provides in part:
>
> "' . . . whenever in this chapter an hour of the day is prescribed for the doing of any act the time used shall be that of the ninetieth degree of longitude west of Greenwich, otherwise known as standard railroad central time.'

"Act No. 67, H. 118, of the Legislature of Alabama, 1962, Special Session, approved July 6, 1962, provides in part:

"' . . . Section 9. The polls shall be opened at each place of voting in each precinct at the hour of eight o'clock in the morning and shall be kept open without adjournment until the hour of six-thirty o'clock in the evening.'

"The first provision would appear to require the use of Central Standard Time, and the second provision would appear to allow the use of Central Daylight Savings Time.

"Shall Central Standard Time or Central Daylight Savings Time govern the opening and closing of the polls for the General Municipal Election in the City of Huntsville, Alabama, to be held September 3, 1968? Your official opinion on the matter is respectfully requested."

A general municipal election will be held in the City of Huntsville on September 3, 1968, and a runoff election will be held, if necessary, on September 24, 1968. See Quarterly Report of Attorney General, Volume 114, page 84.

The statute, a portion of which is first quoted in your request, was originally enacted as Act No. 663, Acts of Alabama 1961, page 827. Said statute applies to municipal elections conducted in this State. See Quarterly Report of Attorney General, Volume 126, page 8.

The second quotation contained in your request is taken from Act No. 67, Acts of Alabama 1962, page 86, which applies to elections conducted in Madison County, including municipal elections.

The Act of Congress of April 13, 1966, known as the Uniform Time Act of 1966, reads, in part, as follows:

"During the period commencing at 2 o'clock antemeridian on the last Sunday of April of each year and ending at 2 o'clock antemeridian on the last Sunday of October of each year, **the standard time of each zone** established by sections 261-264 of this title, as modified by section 265 of this title, **shall be advanced one hour** and such time as so advanced shall for the purposes of such sections 261-264, as so modified, be the standard time of such zone during such period; except that any State may by law exempt itself from the provisions of this subsection providing for the advancement of time, but only if such law provides that the entire State (including all political subdivisions thereof) shall observe the standard time otherwise applicable under such section 261-264, as so modified, during such period." (Emphasis supplied.)

In construing a statute similar to the Uniform Time Act of 1966, supra, the opinion reported in Quarterly Report of Attorney General, Volume 26, page 153, stated, in part, as follows:

"The term 'standard railroad central time' as used in Title 1, Section 12, must have reference to some definite standard to make it capable of meaning. Officially, there exists no such designated time as 'standard railroad central time' except as it relates to the time fixed by Congress . . ."

For the reasons expressed in Quarterly Report of Attorney General, Volume 26, page 153, supra, I am of the opinion that the time known as Central Daylight Saving Time governs the opening and closing of the polls in municipal elections held after April 28, 1968, and prior to October 27, 1968. Consequently, the polls at the general municipal election to be held in the City of Huntsville in September, 1968, should be opened at 8:00 o'clock A. M. and closed at 6:30 P. M. Central Daylight Saving Time.

Very truly yours,

MacDONALD GALLION
Attorney General

August 27, 1968

Honorable M. H. Lanier
City Attorney
City of Madison
Madison, Alabama

Elections — Government — Governor — Municipalities.

1. Where a change in the form of municipal government is directed by the electorate after October 1, 1968, such change will become effective on October 1, 1972.

2. Where such change is directed, the election of the mayor and members of the municipal council will be held in August, 1972.

3. Where such change is directed, the governor does not appoint the mayor and members of the municipal council.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 13, 1968, is as follows:

"Several years ago the City of Madison changed from Mayor-Alderman form of government to an optional form of commission government as provided for under Title 37, Section 89 of the Code of Alabama 1940 as last amended.

"A petition to abandon the commission form of government has been filed with the Probate Judge of Madison County, Alabama,

in accordance with Title 37, Section 120 of the Code of Alabama of 1940 as last amended.

"The term of office of the present Commissioners expires September 30, 1969.

"The City of Madison has less than 12,000 inhabitants, according to the last Federal census, and your attention is invited to Title 37, Sections 126, 133(1), 34(22), and 404.

"If the electorate votes to abandon the commission form of government the Commissioners request your opinion as to the following:

"1. On what date should the election for Mayor and Aldermen be held?

"2. Would the present Commissioners hold office until September 30, 1969, or until September 30, 1972?

"3. Does the Governor appoint the Mayor and Aldermen? See Title 37, Sections 126, and 133(1) of the Code of Alabama of 1940 as last amended."

All municipal elections held within the City of Madison must be conducted in accordance with the provisions of Act No. 664, Acts of Alabama 1961, page 868, as amended by Act No. 166, Acts of Alabama, Regular Session 1965, page 233. Quarterly Report of Attorney General, Volume 126, page 8.

Act No. 71, Acts of Alabama 1959, page 477, reads, in part, as follows:

" . . . No change from the commission form of municipal government to mayor-council form of municipal government hereafter directed by vote of the electors of any municipality in this state shall become effective until October first of the general municipal election year next following the election at which such change is voted. The term of any commissioner which might expire before such date is hereby extended until such date when the form of government changes."

The statute which controls the abandonment of the commission form of government in this State is codified as Title 37, Chapter 4, Article 3, Code of Alabama 1940. It is apparent that some of the provisions of this statute have been modified by the later legislation cited hereinabove. See opinion to Honorable J. Paul Meeks, Judge of Probate, Jefferson County, under date of August 21, 1968.

Since approximately sixty (60) days' notice of any municipal election held in the City of Madison is required by Sections 3 and 4 of Act No. 664, as amended, supra, said City may not now conduct an election to abandon its present form of government prior to October 1, 1968.

General municipal elections were held in Alabama on August 13, 1968. Quarterly Reports of Attorney General, Volume 111, page 78, and

Volume 115, page 36. Therefore, under the provisions of Act No. 71, supra, any change in the form of the government of the City of Madison voted as a result of the petition to which your request refers will take place on October 1, 1972.

Premises considered, your questions are answered as follows:

1. In the event that the electorate of the City of Madison votes to change its form of government after October 1, 1968, the mayor and members of the council of said City will be elected in August, 1972, in an election conducted pursuant to the provisions of Act No. 663, Acts of Alabama 1961, page 827, as amended by Act No. 404, Acts of Alabama, Regular Session 1965, page 582. Act No. 663, as amended, supra, controls municipal elections in municipalities having a mayor-council form of government.

2. In the event that such change is directed by the electorate, the present commissioners of the City of Madison will hold their offices until their successors assume office in October, 1972.

3. In the event of such change in the form of government of the City of Madison, the governor will not appoint a Mayor and members of the City Council. Title 37, Chapter 4, Article 3, supra, no longer requires the governor to make such appointments because of the provisions of Act No. 71, supra, a portion of which is quoted hereinabove.

Very truly yours,

MacDONALD GALLION
Attorney General

August 28, 1968

Honorable Floyd H. Mann
Director
Department of Public Safety
State of Alabama
Montgomery, Alabama

Department of Public Safety — Municipalities — Motor Vehicles.

1. Emergency motor vehicles displaying red lights must belong to a governmental agency, such as a city, county, State or Federal government; however, motor vehicles displaying a blue light need not belong to a governmental agency, but must be used by a law enforcement officer while enforcing the laws of this State.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of July 31, 1968 is as follows:

> "Please refer to Act 434, 1966 Special Session, and give us your official opinion on the following questions:
>
> "1. Is a blue light authorized on a vehicle that does not belong to a state, county or city government? EXAMPLE: A private vehicle belonging to a constable or a part-time policeman in his private vehicle when he is being paid as a policeman.
>
> "2. Is a red light authorized on a vehicle that does not belong to a state, county or city government? EXAMPLE: A private vehicle belonging to a volunteer fire department responding to a fire call.
>
> "3. Under this act, can a political subdivision pass an ordinance authorizing a blue or red light on any vehicle? Under this act, can a political subdivision pass an ordinance authorizing a blue or red light on other vehicles belonging to the political subdivision such as a street department, and designate the same as an emergency vehicle?"

Title 36, Section 1(1), Code of Alabama 1940, as recompiled 1958, provides as follows:

> " 'Authorized emergency vehicle.' Vehicles of the fire deparment (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are designated or authorized by the director or public safety or the chief of police of an incorporated city."

Title 36, Section 19, Code of Alabama 1940, as recompiled 1958, as amended by Act No. 434, Acts of Alabama 1966, Special Session, page 579, provides, in part, as follows:

> "The words 'police vehicle' shall include any emergency vehicle of any legally constituted law-enforcement agency of the state, or any political subdivision thereof, or of the United States. * * * "

Construing the above provisions together and giving them a liberal construction, I am, nevertheless, constrained to hold that the Legislature had in mind vehicles belonging to governmental agencies and not vehicles belonging to individuals when it used such terms as "vehicles of the fire department, * * * and * * * emergency vehicles of municipal departments * * *."

However, I do not believe that the Legislature intended to prevent the sheriffs of this State who are still on the fee basis from using blue lights on their personal cars to assist them in enforcing the law.

You will note that the language in the above-quoted sections of the Code refers to "police vehicles" and any "police vehicle shall include any emergency vehicle of any legally constituted law enforcement agency of the State or any political subdivision thereof, * * * "

Hence, I would conclude that "police vehicles" are not restricted to those vehicles **owned** by governmental agencies but would include vehicles owned and operated by fee basis sheriffs, constables, and part-time policemen. I would add that when the blue light is displayed, the officer should be acting in his capacity as a law enforcement officer and not as an individual citizen. See opinion of this office to Honorable R. A. (Dick) Hail, Justice of the Peace, Robertsdale, Alabama, under date of February 16, 1967, a copy of which is enclosed.

Therefore, the answer to your first question is in the affirmative. See Quarterly Report of the Attorney General, Vol. 127, page 14. But the answer to your second question is in the negative.

The use of the terms "vehicles of the fire department * * *" and "emergency vehicles of municipal departments," excludes the idea of personal vehicles. It is ordinarily considered that a fire department is a part of a municipal government and its vehicles are owned by the municipality and not by some individual. The same understanding would be gained from the words "emergency vehicles of municipal departments."

Your second question refers apparently to a volunteer fireman going from his place of employment to the fire station where the fire trucks are located from whence he will then go on the fire truck or other fire department vehicle to the scene of the fire.

The mode of transportation would be by private vehicle to the fire station, and I do not believe the statutes above-quoted would permit the use of a red light on such a vehicle.

In answer to your third question, I am of the opinion that a city could not, by ordinance, authorize lights on vehicles contrary to the provisions of Title 36 cited above.

Very truly yours,

MacDONALD GALLION
Attorney General

September 5, 1968

Honorable Floyd H. Mann
Director
Department of Public Safety
State of Alabama
Montgomery, Alabama

Words and Phrases — Motor Vehicles.

A "hovercraft" does not come within the definition of a "motor vehicle" or a "motor driven cycle" as those two vehicles are defined in Title 36, Sections 1, 74(42) and 129, Code of Alabama 1940, as recompiled 1958.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of June 17, 1968, is as follows:

> "Production has begun in Continental Europe, England, and Japan on a commercial scale of 'hover-craft.' Do-it-yourself kits are now available in this country. Briefly these devices are designed to transport passengers and freight, but are used as agricultural vehicles also. Presently a giant one is on shakedown between France and England as a ferry. The device is supported on a column of air, and propelled by a jet stream of air, or a blower. It has no wheels, skids, ski, or other support part in contact with the surface while in operation. Its passengers range from one to fifty; its length from 6 feet to fifty feet; its speed from 15 to 80 mph; its distance above the surface from 3 inches to 3 feet; and it operates above land or water, with no contact with either. Some of these devices are presently in the United States.
>
> "Please inform us if a 'hover-craft' as described is a motor vehicle as defined in Title 36, Sec. 1(21) and (50), of the 1940 Code of Alabama, as amended, so as to require the operator of a 'hover-craft' to be in possession of an Alabama Driver License.
>
> "Also, would such a device powered by a 3½ hp engine and weighing 73 pounds, be within the description of a motor-driven cycle, as described in Title 36, Sec. 1(18), (19), and Section 129?"

Title 36, Sections 1(21) and 1(50), Code of Alabama 1940, as recompiled 1958, provide as follows:

> "(21) 'Motor vehicle.' Every vehicle, as herein defined, which is self-propelled."
>
> "(50) 'Vehicle.' Every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks; provided, that for the purposes of this title, a bicycle or a ridden animal shall be deemed a vehicle."

Title 36, Section 74(42)(d), Code of Alabama 1940, as recompiled 1958, provides as follows:

> "Motor vehicle.—Every self-propelled vehicle which is designed for use upon a highway, including trailers and semi-trailers

designed for use with such vehicles (except traction engines, road rollers, farm tractors, tractor cranes, power shovels, and well drillers) and every vehicle which is propelled by electric power obtained from overhead wires but not operated upon rails."

The above provisions have been in the Alabama Code since 1939 and 1951 respectively, and I am confident that the Legislature contemplated, in enacting these statutes, that a motor vehicle using the highways of this State would have wheels which would be in contact with the road surface. The "hovercraft" described in your letter would not have wheels in contact with the road surface. Therefore, it is my opinion that a "hovercraft" is not a motor vehicle within the meaning of our present statutes.

I might also point out that the "hovercraft" so far as I know, has not been developed to the point where it would be proposed for use on the highways of this country.

I would further suggest that this is a matter that addresses itself to the Legislature.

The answer to your second question is found in Section 1 of Title 36, supra, wherein it is provided that a motor driven cycle is a motor vehicle with "not more than three wheels in contact with the ground." Therefore, I conclude that a "hovercraft" would not come within the description of a "motor driven cycle" as now described in Title 36, supra.

Very truly yours,

MacDONALD GALLION
Attorney General

September 9, 1968

Honorable Carl E. Sellers
Judge of Probate
Houston County
Dothan, Alabama

Deeds — Filing Tax — Mortgages — Opinions Overruled, Modified or Distinguished.

1. Where mortgagor conveys his interest in the mortgaged property to a vendee who assumes the mortgage debt, the unpaid balance of the mortgage debt should be included in determining "value" in order to compute the amount of deed tax if mortgage tax has not been paid.

2. "Future advance mortgage" in the nature of a construction loan normally advances money as construction progresses.

3. Where mortgagor conveys his interest in mortgaged property on "future advance mortgage" to a vendee who assumes such mortgage debt and only a small part of the mortgage money has been advanced, the unpaid balance of the mortgage debt should not be considered in determining "value" in order to compute the amount of the deed tax.

4. Quarterly Report of Attorney General, Volume 54, page 196, distinguished.

Opinion by Assistant Attorney General Webb.

Dear Judge Sellers:

I have your letter of August 26, 1968 requesting my opinion as follows:

> "On August 23, 1968, a Deed was presented for record in this office from the Carriage House Apartments of Dothan, Inc. to Thomas E. Zammit. There is cited therein the assumption of two mortgages, one of which was taxable and the mortgage tax collected at the time it was filed for record. The second mortgage cited was given to the First National Bank of Birmingham in the amount of $330,000.00, on which no tax was paid at the time this mortgage was recorded. The mortgage to the bank is shown to be a 'Future Advance Mortgage', and as explained by Mr. L. J. Langlois, President of the Carriage House Apartments of Dothan, is a construction loan for an apartment house which is being built in this city. He further states that at the present time, only a small portion of the construction money has been advanced to his company, and estimates that the value of the real estate being conveyed by the deed to Mr. Zammit does not exceed $51,000.00, of which $17,000.00 was paid for the land, and the balance being the value of the first stage of the construction of the building.
>
> "We have charged a deed tax of $330.00, since the mortgage to the bank was exempt from the mortgage tax, and is being assumed by the grantee.
>
> "We would like the opinion of your office regarding the deed tax due on the instrument, since the building has not been completed, and the present value of the conveyance has been given as $51,000, even though it is subject to the $330,000.00 mortgage.
>
> "We have made copies of the deed and first page of the mortgage for your examination, and would appreciate your reply at an early date, so that we may refund any portion of the deed tax, if such a refund is due."

In an opinion of this office reported in Quarterly Report of Attorney General, Volume 54, page 196(199), it was held:

> "A deed tax must be collected on the unpaid balance of the mortgage, upon which a mortgage filing tax has not been paid, each time the mortgagor's interest in the mortgaged property is transferred. Title 51, Section 618, Code of Alabama 1940 states that 'No deed, bill of sale, or other instrument of like character which conveys any real or personal property within this state, or which conveys any interest in any such property . . . . shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record . . . .' This section taxes the recording of all instruments purporting to convey property or interest in property. The amount of tax is determined in each instance according to the value of the property or property interest which is being conveyed. The key word here is 'value.' Clearly, consideration is strong evidence in the determination of value. See Quarterly Report of Attorney General, Volume 17, page 265; Cf. Quarterly Report of Attorney General, Volume 19, page 181. **When the mortgagor's interest is conveyed, and the vendee assumes the mortgage, the unpaid balance of the mortgage is part of the consideration passing from the vendee to the vendor. Therefore, unless the mortgage filing tax has previously been effectively paid, this unpaid balance must be considered in the determination of 'value.'** " (Emphasis Supplied.)

This opinion is obviously the basis of your decision to collect $330.00 deed tax, which is fifty cents per $500.00 of the mortgage value of $300,000.00.

Future advance mortgages, such as that under consideration, are those normally used in construction loans and advances are made as construction progresses. The total value of the mortgage loan is probably close to or closely related to the ultimate value of the property but bears little relationship to the present value being conveyed. To apply the rule expressed in Quarterly Report of Attorney General, Volume 54, supra, without consideration of such actual present value, would, in some instances, impose a tax of more than the actual present value of the property being conveyed which, in my opinion, was not the intent of the Legislature in levying the deed tax under Title 51, Section 618, Code of Alabama 1940, Recompiled 1958. Tax on such future values is more properly handled under Section 619 of Title 51, supra, which is not applicable in this instance since the mortgagee is tax exempt.

I am, therefore, of the opinion that the unpaid balance of the future advance mortgage should not be considered in arriving at the tax due under Section 618, supra, and that such tax should be based, rather, on the actual present value of the property conveyed which, according to your letter, is about $51,000.00, making the tax due about $51.00.

The opinion reported in Quarterly Report of Attorney General, Volume 54, page 196, is, accordingly, distinguished from the holding of this opinion.

Very truly yours,

MacDONALD GALLION
Attorney General

September 9, 1968

Miss Edna M. Reeves
Director
State Agency for Social Security
CAPITOL

Social Security — County Offices — Compensation — Ex Officio Fees.

1. County officials compensated on a fee basis who receive ex officio fees by county warrant are, for social security purposes, deemed to be self-employed.
2. Employees of county officials compensated on a fee basis are considered, for social security purposes, to be county employees.

Opinion by Assistant Attorney General McQueen.

Dear Miss Reeves:

Your request for an official opinion, bearing date of July 10, 1968, is as follows:

> "Under the Alabama State Federal Social Security Agreement many counties throughout the State have covered the position classification 'Officials and employees whose compensation is on a fee basis.' This coverage being determined on the wishes of the officials occupying such positions, since this was one of the optional exclusions permitted under the Social Security law applicable to State and Local Governments.
>
> "The 1967 Amendment made a change in the coverage of fee basis officials who are compensated **solely** from fees, as well as employees working in the fee basis officials' offices. Pertinent parts of the regulations are quoted:
>
> "POSITIONS COMPENSATED SOLELY ON A FEE BASIS.
>
> * * * * * * *
>
> "(b) **Effect of 1967 Amendments.**—(1) **Fees as Self-Employment Income.**—The amendments provide that services performed after 1967 by State and local employees in positions compensated **solely** by fees, which are not covered under an agreement, are compulsorily covered as self-employment. (The provision does

not apply to positions compensated in part by fees and in part by salary.)

"EXCEPTION: An employee who in 1968 performs services in a position compensated **solely** by fees and whose services are not covered under an agreement may make an irrevocable election **not** to have such fees constitute net earnings from self-employment for 1968 and every year thereafter. The certificate of election must be filed on or before the due date of his income tax return for 1968 (including any extension) with the Internal Revenue Service pursuant to regulations prescribed by the Secretary of the Treasury or his delegate.

* * * * * * *

"(D) THE AMENDMENT RELATING TO POSITIONS COMPENSATED SOLELY ON THE BASIS OF FEES DOES NOT AFFECT IN ANY WAY THE SOCIAL SECURITY COVERAGE OR THE STATUS UNDER STATE LAW OF OTHER PERSONS WHO MAY BE WORKING IN THE SAME OFFICE WITH OR WHO MAY BE UNDER THE SUPERVISION OF THE FEE BASIS EMPLOYEES.

* * * * * * *

"Based upon the 1967 amendments several questions have arisen upon which we request your official opinion.

"1. There are Ex Officio fees paid to the various fee basis officials by the county on a warrant drawn on the county treasury. The amount of these ex officio fees being stipulated in the Code of Alabama. Since these fees are not paid by the public may they be considered as a salary, or are they to be counted in the gross fees of the official?

"2. In some of the counties there are employees who are paid by both the county and the fee basis official, the county being the appointing authority. The portion paid by the county to be remitted through the county.

"3. In some counties all employees in the fee basis officials' offices are employed, discharged and paid from funds received as fees. Since the fee basis official himself has the privilege of having social security coverage as a self-employed individual, his position being removed from coverage under the Alabama Federal-State Social Security Agreement, are these employees his personal employees with the county being entirely relieved of collecting and remitting social security tax?

"4. Is it possible for the County and State to be considered as the employer of the employees set out in three above and, if so, what procedure should be established in order to collect

the tax since the county will not be responsible for any of the fees paid to the fee basis official?"

In answer to your first inquiry, you are advised that county officials in the State of Alabama who receive ex officio fees paid by county warrant are to be considered as self-employed for social security purposes and such ex officio fees are not to be considered as salary, but, on the contrary, are to be calculated in the gross fees of the official. The ex officio fees received by such officials are designated by statute as fees, and are not considered to be a salary within the purview of the 1967 Amendment to the Social Security Act, which classifies, for social security purposes, officers whose compensation is derived solely from fees.

You are, therefore, advised that these officers are self-employed within the meaning of the Social Security Act as amended.

In answer to your Questions Nos. 2 and 3, you are advised that in view of Section 289 of the Social Security Act, the employees of those county officials who are compensated solely on a fee basis should be considered, for social security purposes, to be county employees. This applies to those employees of fee basis officials who are paid partly from the fees received by the officials and partly from county funds. It likewise applies to those employees who are appointed by the county or who are appointed and hold their position at the will of the fee basis officials.

I have partly answered your fourth question in answer to your Questions Nos. 2 and 3.

The second part of your fourth question, as to what procedure should be established in order to collect the social security tax from these employees of fee basis officials, does not present a legal question. This is an administrative matter and should be worked out between your agencies, the counties involved, and the fee basis officials.

Yours very truly,

MacDONALD GALLION
Attorney General

September 10, 1968

Honorable J. Paul Meeks
Judge of Probate
Jefferson County
Birmingham, Alabama

Honorable Mel Bailey
Sheriff
Jefferson County
Birmingham, Alabama

Honorable Julian Swift
Clerk, Circuit Court
Jefferson County
Birmingham, Alabama

Elections — Election Officers — Appointments.

Title 17, Section 125, Code of Alabama 1940, only requires that one inspector and one clerk be appointed from each list furnished the appointing board by each political party or candidate.

Opinion by Assistant Attorney General McQueen.

Gentlemen:

Your request for an official opinion, bearing date of August 5, 1968, is as follows:

> "We desire your opinion on the construction of Section 125 of Title 17, Code of Alabama as amended, with respect to appointments of election workers from the lists submitted by the two major political parties.
>
> "Section 125 provides that 'each political party—may furnish the appointing board a list of not less than three names of qualified electors from each voting place, and from each of said lists an inspector and clerk shall be appointed for each voting place; — — —.'
>
> "Section 135 of Title 17 has a special provision applicable to counties of a population of 400,000 or more.
>
> "Act No. 18 of the Special Session of 1956 (Sec. 5) provides for the number of inspectors and clerks for each voting center in elections held in counties having a population of 400,000 or more.
>
> "Please advise if all of the election workers at each voting center in general elections must be appointed from the two lists furnished by the two major political parties, or whether only one inspector and one clerk for each voting center must be appointed from each list submitted by the two major political parties, for the November General Election to be held in Jefferson County.
>
> "Your opinion clarifying the requirements will be appreciated."

In answer to your request, you are advised that, in my opinion, under the provisions of Title 17, Section 125, Code of Alabama 1940, it is not necessary that all of the election officials at a voting place in a general election be appointed from the lists furnished by the two major political parties to the appointing board, but, on the contrary, the requirements of said section will be met if the board appoints one inspector and one clerk from each list at each voting place.

You cite in your request Title 17, Section 135, Code of Alabama 1940, but in my opinion this section has no bearing on this question.

The provisions of Act No. 18, Special Session of the Legislature 1956, page 38, do have a material bearing on this question. This act applies to all counties having a population of 400,000 or more inhabitants according to the last Federal Decennial Census and establishes voting centers in such counties. A "voting center" is defined in the act as any place in the county which the Board of Registrars, with the approval of the county governing body, designates as a **voting place.**

Section 5 of said act provides, that for each voting center where one machine is used, there shall be a chief inspector, an assistant chief inspector and two clerks. The section further provides for additional clerks in the event more than one voting machine is used at the voting center.

A voting center being defined by said Act No. 18 as a voting place, it is my opinion that the requirements of Section 125, supra, will be met and satisfied if the appointing board appoints from each list furnished by the political parties one inspector and one clerk at each voting center in your county.

Very truly yours,

MacDONALD GALLION
Attorney General

September 13, 1968

Honorable Earl D. James
Mayor
City of Montgomery
Montgomery, Alabama

Appropriations — Municipalities — Opinions Overruled, Modified or Distinguished.

1. A municipality may make an appropriation to the chamber of commerce for the purpose of developing, advertising and promoting its resources.

2. Quarterly Report of Attorney General, Volume 39, pages 32 and 65, overruled.

Opinion by Assistant Attorney General Webb.

Dear Mayor James:

Your request for an official opinion dated August 28, 1968, is as follows:

> "I will appreciate your opinion as to the legality of the following proposed action by the City of Montgomery:

"The City of Montgomery has, by ordinance No. 22-68, copy of which is attached hereto, levied a license tax of 2% inside of the city and 1% within the police jurisdiction outside of the corporate limits, on income of hotels, motels and other similar type lodgings. It is the desire of the City Commission to use half of this income to increase tourist traffic through Montgomery. The Commission is of opinion that this can best be handled by paying the money directly to the Montgomery Area Chamber of Commerce, to be added by that organization to those of its funds which will be expended for advertising the advantages of this locality.

"We call attention to the fact that paragraph 8 of Act No. 463 of the 1961 Session, effective August 1, 1961, said act covering the charter of the City of Montgomery, reads as follows:

" 'For the advancement of the interests of the city the Board of Commissioners may make expenditures for advertisement of the advantages of the locality and may make contributions together with its commercial organization for that purpose.' Identical provision, Sec. 8, Act 813, 1951 Session, at p. 1426, Vol. 2.

"Considering this section, would it be constitutional for the City of Montgomery to pay an amount equal to one-half of the proceeds of the above described tax to the Montgomery Area Chamber of Commerce for the purposes set forth?"

You have failed to enclose a copy of the tax ordinance No. 22-68 and I, therefore, express no opinion as to its validity, nor have you requested such. I assume, however, for purposes of this opinion, that such ordinance is valid and that the receipts therefrom are not otherwise appropriated or restricted in use.

This office ruled, in opinions reported in Quarterly Report of Attorney General, Volume 39, at pages 32 and 65, that municipalities had no authority of law to appropriate funds to a chamber of commerce.

These two opinions were based on Section 94 of the Constitution of Alabama 1901, and on two prior opinions addressed to county governing bodies reported in Quarterly Report of Attorney General, Volume 35, at pages 7 and 84.

Subsequently, the opinions to the counties were overruled in Quarterly Report of Attorney General, Volume 64, page 82, at which time this office held that, pursuant to an amended Title 12, Section 12(22), Code of Alabama 1940, a county could make such an appropriation. Constitutional objections were removed in the following language:

"If the opinion of June 13, 1944, supra, is correct, the amendment included in Act No. 344, supra, would be ineffective for the reason that even though the Legislature attempted to give the county authority to enter into contracts to carry out the

purposes set forth in subsection 22, supra, the county would still be without the power to contribute its funds to a private association because the Constitution forbids such an appropriation. Constitution of Alabama 1901, Section 94; **Stone v. State,** 223 Ala. 426, 136 So. 727.

"Upon a reconsideration of the question, it is my conclusion that the opinion of this office rendered June 13, 1944, supra, is in error and should be overruled.

"It is recognized that a municipal corporation may engage in the advertisement and promotion of the community when so authorized by the Legislature. 37 Am. Jur. Municipal Corporation, Section 127, page 740. See also 79 A.L.R. 466. Clearly the Legislature, by amending subsection 22, supra, attempted to authorize the county governing body to use county funds for promoting and advertising the county, and for bringing new industries into the cities and the county.

"The opinion rendered June 13, 1944, supra, was based upon the case of **Stone v. State,** supra, where it was held that a contract made by the county with the broadcasting corporation was invalid, for the reason that the primary purpose of the contract was not to advertise the county, but to induce the promoters of the radio station to establish it in the city of Mobile. Although such contract was held invalid, the court was careful to point out that the county was free to negotiate a contract with an established media of advertising, such as the big daily newspapers of the State, without violating Section 94 of the Constitution. This is true even though the advertising medium was an association or corporation receiving financial benefit from the county. It is pointed out in **Stone v. State:**

"' . . . that the cause giving birth to this section of the Constitution was the recognized fact that "the trustees of government are and have always been amenable to" the subtle influence of anticipating that by establishing and promoting a new industry or institution in a community, though established for private gain, it brings to the community where established some public benefits, and that such influence encourages the improvident expenditure of public money and the incurring of governmental liabilities that must be taken care of by taxation. No such influence could or would be present in negotiating a contract with an established medium of advertising, and the trustees of the government in negotiating and entering into such contract would be aided by competition, and deal at arm's length with only the benefit that would result from such advertising in view.'

"I am of the opinion that a chamber of commerce is not in business to make a profit for itself and is not a business enterprise. This organization is concerned with promoting trade and

commerce, but an organization derives no profits from increased trade or business even though its individual members may do so.

* * * * *

"I am of the opinion, therefore, that the opinion rendered by this office on June 13, 1944, Quarterly Report of Attorney General, Vol. 35, page 85, is in error, and is hereby overruled. I further hold that the county is not prohibited by Section 94 of the Constitution from donating or contributing funds to a chamber of commerce in a program designed to bring new industries into the county; and, further, that by reason of the amendment to subsection 22, supra, a contract, agreement, or pledge may be made by the county with or to a chamber of commerce to carry out the purposes enumerated in subsection 22, as amended, supra."

Municipalities possess power and authority to promote, advertise and develop its resources as do the counties in language very similarly worded to Section 12(22) of Title 12, supra. This authority is contained in Title 37, Section 471(3), Code of Alabama 1940, Recompiled 1958 (1967 Cumulative Pocket Part). I am, therefore, of the opinion that your question should be answered in the affirmative and the opinions reported in Quarterly Report of Attorney General, Volume 39, at pages 32 and 65, are accordingly overruled. In view of the fact that all municipalities possess authority to make such appropriations for resources development under Title 37, Section 471(3), supra, I feel it unnecessary to rule on the effect of that portion of Act No. 463, Acts of Alabama 1961, page 501, quoted by you.

Very truly yours,

MacDONALD GALLION
Attorney General

September 16, 1968

Honorable James W. Webb
Legal Counsel
Examiners of Public Accounts
Montgomery, Alabama

Officers and Offices — Examiner of Accounts — Counterfeit Money — Accounting.

Public officials and State agencies not liable for loss incurred by virtue of taking counterfeit money.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion of this office, bearing date of August 19, 1968, is as follows:

"During the course of recent examinations, this department has discovered several instances of public officials and other state agencies receiving counterfeit money. In each instance, the counterfeits were excellent reproductions of valid currency and not easily discernible to the average person. Also, in each instance, the proper law enforcement agencies have been promptly notified on discovery.

"Please advise me as to whether or not loss incurred by virtue of counterfeit money constitutes a personal liability of the official collecting the same."

My answer to your inquiry is in the negative.

This office has consistently held that if public officers or their employees observe the highest degree of care and diligence in safeguarding money which has been collected for the state and county and the office of the public official is burglarized, he and his sureties, and his employees are not personally liable for any loss thereby sustained. Quarterly Report of Attorney General, Vol. 130, page 12, and opinion therein cited.

In my judgment, the situation presented by you is analogous to the one presented in the opinion hereinabove cited. It does not appear from your request, nor from any other fact, that the person or persons taking these counterfeit bills were not exercising and observing the highest degree of care and diligence in the performance of their duties. As a matter of fact, it is common knowledge that it takes an expert to determine what bills are legal currency and what bills are counterfeit.

I do not believe that mere laymen, such as public officials or their employees, are sufficiently skilled in this line to determine a counterfeit bill from a legal bill, and they should not be held personally liable in this regard.

Yours very truly,

MacDONALD GALLION
Attorney General

September 17, 1968

Honorable Leonard Beard
Director
State Planning and Industrial Development Board
State Office Building
Montgomery, Alabama 36104

Bonds — Funds — Industrial Development — Interest — Municipalities.

The principal of and interest on bonds issued under the Cater Act or the Wallace Act are payable solely out of

the funds derived from the lease or sale of projects acquired under said statutes.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated August 29, 1968, is as follows:

> "Enclosed is a copy of a letter, dated August 23, from Mr. Manuel F. Cohen, Chairman of the Securities and Exchange Commission, to Governor Albert Brewer. Please note that on page 1, 3rd paragraph, Mr. Cohen asserts that his staff was informed by a representative of the State of Alabama that under Alabama law if a municipality issues industrial revenue bonds and if the private enterprise whose facilities are financed in this way defaults in its required payments to service the bonds, then the municipality would be called upon to make good on the bonds, and if it is unable to do so, the credit of the State of Alabama is ultimately pledged to the payment of the bonds.
>
> "I would very much appreciate your making a ruling on the legality of the responsibility of an industrial development board or a municipality in cases where there is default on the part of a private enterprise whose facilities are financed through the issuance of industrial revenue bonds. It has been our opinion that in issuing industrial development bonds the city, industrial development board or the State does not pledge the faith and credit in any manner in insuring the complete amortization of said bond issues.
>
> "I shall appreciate your ruling on this question so that I may advise Governor Brewer, Mr. Hugh Maddox, and Mr. Cohn of the Securities and Exchange Commission."

Bonds of the type to which your request refers are issued under the Cater Act or the Wallace Act.

The Cater Act, Act No. 648, Acts of Alabama 1949, page 991, as amended, is now codified as Title 37, Chapter 17, Code of Alabama 1940, Recompiled 1958. This statute authorizes a municipality to create an industrial development board with power to acquire, own, lease and dispose of properties for the purpose of promoting industry and developing trade by inducing manufacturing, industrial and commercial enterprises to locate within this State. Such a board is a public corporation, the funds of which are controlled by its board of directors.

The Wallace Act, Act No. 756, Acts of Alabama 1951, page 1307, as amended, is now codified as Title 37, Chapter 10, Article 12, Code of Alabama 1940, Recompiled 1958. This statute grants to the governing body of a municipality powers similar to those conferred upon an

industrial development board by the Cater Act. See **In re Opinion of the Justices,** 256 Ala. 162, 53 So. 2d 840.

Section 9 of Act No. 648, supra, reads, in part, as follows:

> " . . . All bonds issued by the corporation shall be payable solely out of the revenues and receipts derived from the leasing or sale by the corporation of its projects or of any thereof as may be designated in the proceedings of the board of directors under which the bonds shall be authorized to be issued. . . . "

Section 4 of Act No. 756, supra, reads, in part, as follows:

> " . . . All bonds issued by a municipality under authority of this act shall be limited obligations of the municipality the principal of and interest on which shall be payable solely out of the revenues derived from the leasing of the projects to finance which the bonds are issued. Bonds and interest coupons issued under authority of this act shall never constitute an indebtedness of the municipality within the meaning of any state constitutional provision or statutory limitation, and shall never constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers, and such fact shall be plainly stated in the face of each such bond. . . . "

Therefore, I am of the opinion that bonds issued under the provisions of the statutes here considered are limited obligations of the municipality or its industrial development board and such bonds must be retired with funds derived from the lease or sale of the project financed by the bond issue. I am further of the opinion that no other funds may be used to retire such bonds. See In **re Opinion of the Justices,** 254 Ala. 506, 49 So. 2d 175 (Cater Act), and **Newberry v. City of Andalusia et al.,** 257 Ala. 49, 57 So. 2d 629 (Wallace Act).

I trust that this opinion furnishes the desired information.

Very truly yours,

MacDONALD GALLION
Attorney General

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Airports—Zoning	Charles A. Brothers	Sept. 17	606
Appropriations—Fire Hydrants	Wm. F. Joseph, Jr.	Aug. 27	205
Bids—Dividing Purchases	James E. Moore	July 1	118
Bids—Emergencies	John H. Marcus	Sept. 17	607
Bids—Emergencies	Waymon Hornsby	Aug. 15	576
Bids—Microfilming	H. W. Suddath	July 29 & Sept. 3	327
Bids—Previous Contracts	James E. Moore	July 25	118
Commissioners—Storage Facilities	Stell Benefield	Aug. 6	569
Coroners—Auto Radio	Robt. L. Hayes	Aug. 6	564
Depositories—Savings and Loan Assns.	Wendell C. Owens	Aug. 6	574
Funds—Transfer	Tom W. Turner	July 22	587
Gasoline Fund—Use	John H. Marcus	Sept. 19	607
Municipalities—Sewage Line	Bernard A. Reynold	July 25	298
Offices—Closing	Joe J. Phillips, Sr.	Aug. 29	30
Offices—Purchases	Harry L. Weaver	Sept. 27	611
Prisoners—Hospitals	Jack Huddleston	July 3	535
Property—Juvenile Court	E. Harvey Albea	Aug. 26	593
Surplus Property—Sales	Bertice E. Latham	Aug. 28	2

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Destroying Graves—Historical Markers	Tom W. Turner	Aug. 19	587
Firearms—Forfeiture	E. C. Hollis	Aug. 1	565
Insane Hospitals—Commitment	J. S. Tarwater	July 30 & Sept. 24	Mental Health
Justices of the Peace—Costs	Wm. H. Tuck	July 17	331
Justices of the Peace—Jurisdiction	R. A. Hail, Jr.	Sept. 4	527
Justices of the Peace—Writ of Discovery	E. G. Rickarby	July 23	550
Suspended Sentences—Appeals	John D. Jolly	Aug. 6	Dist. Atty.
Warrants—Attorneys	John D. Jolly	Aug. 5	Dist. Atty.
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ELECTIONS:			
Absentee—Death	Joe Starnes, Jr.	Sept. 6	601
Candidates—Write-ins	E. A. Grouby	Aug. 27	14
Independents—Qualifying	Mabel Amos	Sept. 13	Sec. of State
Municipalities—Write-ins	J. Paul Meeks	July 16	450
Municipalities—Write-ins	Oscar C. Dobbs	July 17	541
Registrars—Meetings	T. C. Almon	Sept. 13	45
Tie Vote—Runoff	Norman K. Brown	Aug. 22	329
Voters—Disqualification	Clarence Nance	Aug. 27	420
Voters—Residence	Charlesine McFerrin	July 22	544
Voters—Residence	Demp Thrash	July 16	542
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HOSPITALS:			
Bids—Prior Contracts	Joe L. Payne	July 26	119
Counties—Ambulance Service	Carl E. Maye	Sept. 17	216
Meetings—Executive Sessions	Perry Hubbard	July 3	543
Mobile County—Funds	James E. Moore	Sept. 12	118

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INSURANCE:			
Deposits—Release	Agnes Baggett	Aug. 9	St. Treas.
Mortgage Companies—Agents	Walter S. Houseal	July 29	Ins. Dept.
Nat. Guardsman—Death or Injury	Alfred C. Harrison	July 17	Mil. Dept.
State Docks—Liability Insurance	G. Sage Lyons	Aug. 29	St. Docks
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Athletic Assn.—Appropriation	Marvin Dawson	July 31	560
Bids—Additional Work	Dennis Porter	Aug. 13	578
Bids—Lowest and Substitute	M. N. Brown	July 16	518
Candidates—Vacancies	Arnold Teks	July 18	549
Council—Elections	Cecil Forehand	Aug. 19	586
Elections—Write-ins	B. A. Rogers	Sept. 6	600
Employees—Civil Service	John L. Baker	July 16	540
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Govt.—Elections	B. F. Walden	Aug. 19	580
Govt.—Petitions	John Wm. Grayson	Sept. 6	496
Industrial Development—Loans	Wm. M. Bouldin	Sept. 18	503
Motor Vehicles—Emergency Lighting	John F. Watkins	Aug. 30	199
Officials—Residence	Travis S. Collier	Aug. 6	570
Ordinances—Advertising	Jerry R. Barksdale	Aug. 15	313
Parks—Appropriations	H. A. Coleman	July 11	486
Sales Tax—Levy	Wm. L. Green	July 24	547
Schools—Stadium	Alton Cobb	July 15	125
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Waterworks—Delinquent Fee	G. W. Ward	Aug. 29	597

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City Councilman—Schools	N. B. Breland	July 11	539
City Councilman—Telephone Co.	Dan W. McCoy	July 15	427
City Councilman—Waterworks	F. M. Burgess	Sept. 13	604
City Recorder—Housing Authority	John D. Coleman	Aug. 8	571
Civil Service—Policeman	Robt. M. Field	Sept. 24	497
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Judges of Probate—Records	Thomas A. Hayes	July 30	59
Judges—Resignation	D. L. Rosenau, Jr.	July 30	558
Legislator—Temporary Judge	Thomas H. Jackson	Sept. 27	291
Mayor—Justice of the Peace	Frank W. Babacy	Sept. 6	602
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Registers—Fees	O. B. Griffin	July 3	534
Sheriffs—Attorneys	Joe J. Phillips, Sr.	Sept. 13	30
Sheriffs—Pistol Permits	T. C. Almon	Sept. 19	45
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Bids—Special Equipment	Ernest Stone	July 26	Ed. Dept.
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City Boards of Education—Abolishment	Fred Hubbard	Aug. 27	596
City Boards of Education—Attorneys	Vivian Stanford	July 11	517
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Trade Schools—Needs	Leland Enzor	July 8	219
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Council on the Arts—Appropriations	Bennett L. Cherner	July 29	559
Junior Colleges—Garnishments	S. D. Bishop	Sept. 3	594
Space Science Exhibit Comm.—Employees	Jack Giles	Sept. 13	603
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Exemptions—New Industry	W. H. Sessions	July 17	545
Filing Tax—Long Term Leases	John L. Moore	July 19	546
Filing Tax—Mortgages	John L. Moore	July 29	546
Gasoline Tax—Schools	C. A. Fredd	July 26	557

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